IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

United India Insurance Co. Ltd. Vs. Rafiq Khan & Others
(D.B. Civil Special Appeal No.46/2006)

D. B. Civil Special Appeal under Rule 18 of Rajasthan High Court Ordinance against the judgment dated 18-10-2005 in SB Civil Misc. Appeal No.178/2005.

Date of Judgment: January 04, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Mr. P.S.Shukla, for the appellant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the order dated October 18, 2005 of the learned Single Judge whereby Civil Misc. Appeal preferred by the appellant United India Insurance Company Ltd. was dismissed.

2. We have heard learned counsel for appellant and scanned the material on record.

3. The only ground raised before us by the learned counsel for the appellant is that at the time of accident the driver of the bus was not having valid and effective license to drive heavy goods vehicle, therefore the insurance company was not liable to pay the compensation. This argument was also raised before the learned Single Judge which was turned down and it was indicated as under:-

> "To avoid its liability the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care regarding use of vehicle

> by a duly licensed driver. It is not disputed that the license in question was valid for the period from 5.2.1991 to 2.3.2006 and an endorsement of addition to drive heavy goods vehicle was made on 11.11.1994. At that time no period of validity to drive transport vehicle was mentioned on the driving license. Therefore, per se the driving license was valid upto March,2006. In the above circumstances, it cannot be held that owner of the vehicle did not take adequate care and caution to verify the period of effectiveness of driving license and hence owner of the vehicle cannot be held liable for breach of policy condition."

4. We also find that the appellant has failed to establish that the breach of insurance policy was made to the knowledge of the insured. In Sohan Lal Passi Vs. P.Sesh Reddy (AIR 1996 SC 2627), their Lordships of the Supreme Court indicated as under:-

> "... While interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had willfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act."

5. For these reasons, we see no infirmity in the impugned order and instant appeal being devoid of merit stands dismissed without any order as to costs.

(Mohammad Rafiq),J. (Shiv Kumar Sharma)J.

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